

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT
AND SAN BERNARDINO COUNTY
BEHAVIORAL HEALTH.

OAH CASE NO. 2013120449

ORDER GRANTING SAN
BERNARDINO COUNTY
BEHAVIORAL HEALTH'S MOTION
TO DISMISS

On December 12, 2013, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Rialto Unified School District (District) and San Bernardino County Behavioral Health (County). On January 8, 2014, the County filed a Motion to Dismiss, alleging that Student did not serve a copy of the complaint on the County and because it was not an appropriate party in this action. OAH received no response to the Motion to Dismiss from Student or the District.¹

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq. (IDEA))² provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in Section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

¹ The District filed its own motion to dismiss, which will be ruled upon in a separate order.

² All statutory citations are to title 20 United States Code, unless otherwise noted.

DISCUSSION

In the present matter, the County contends that Parent on behalf Student did not serve a copy of the complaint upon the County, and that the County only became aware of the complaint when it received from OAH a copy of the scheduling order. Student's complaint includes a proof of service that indicates Parent served a copy of the complaint upon the County by first class mail. The County's motion to dismiss does not contain a declaration under the penalty of perjury that the County did not receive a copy of Student's complaint. Accordingly, the County did not establish that Parent on behalf of Student did not serve a copy of the complaint upon the County.

As to the County's contention that it is not a responsible public agency, the complaint does not include any allegations regarding the County. The complaint alleges an incident involving a teacher acting improperly. However, the complaint fails to allege that the teacher was an employee or under the control of the County, or the County had any responsibility for the teacher's conduct. Therefore, the County's motion to dismiss is granted as the complaint does not establish any triable issue that the County is a responsible public agency under the IDEA.

ORDER

The County's Motion to Dismiss is granted. The County is dismissed as a party in the above-entitled matter.

IT IS SO ORDERED.

Dated: January 16, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings